

1
2
3
4
5
6 **UNITED STATES DISTRICT COURT**
7 **DISTRICT OF NEVADA**
8

9 NICOLAS FELIX,

10 *Petitioner,*

3:09-cv-00483-LRH-VPC

11 vs.

ORDER

13 E.K. McDANIEL, *et al.*,

14 *Respondents.*

15
16 This habeas matter under 28 U.S.C. § 2254 comes before the Court following initial review
17 under Rule 4 of the Rules Governing Section 2254 Cases (the “Habeas Rules”) of the amended petition
18 (#33) filed by the Federal Public Defender, as well as on petitioner’s motion (#36) for review and entry
19 of a scheduling order. Following upon said review, the motion will be granted and a response directed.

20 IT THEREFORE IS ORDERED that petitioner’s motion (#36) for review and entry of a
21 scheduling order is GRANTED and that respondents shall have forty-five (45) days from entry of this
22 order within which to answer, or otherwise respond to, the amended petition, including by motion to
23 dismiss. Any response filed shall comply with the remaining provisions below, which are tailored to
24 this particular case based upon the Court’s screening of the amended petition and which are entered
25 pursuant to Habeas Rule 4.

26 IT FURTHER IS ORDERED that any procedural defenses raised by respondents in this case
27 shall be raised together in a single motion to dismiss. Procedural defenses omitted from such motion
28 to dismiss will be subject to potential waiver, except as to any procedural default defense arising from

1 a holding of exhaustion premised upon otherwise unexhausted claims being procedurally barred in the
2 state courts. Respondents shall not file a response in this case that consolidates their procedural
3 defenses, if any, with their response on the merits, except pursuant to 28 U.S.C. § 2254(b)(2) as to any
4 unexhausted claims clearly lacking merit.

5 IT FURTHER IS ORDERED that, in any answer filed on the merits, respondents shall
6 specifically cite to and address the applicable state court written decision and state court record
7 materials, if any, regarding each claim within the response as to that claim.

8 IT FURTHER IS ORDERED that any additional exhibits filed by the parties herein shall be
9 filed with a separate index of exhibits identifying the exhibits by number or letter. The CM/ECF
10 attachments that are filed further shall be identified by the number or numbers (or letter or letters) of
11 the exhibits in the attachment, as counsel for petitioner has done herein.

12 IT FURTHER IS ORDERED that petitioner shall have thirty (30) days from service of the
13 answer, motion to dismiss, or other response to file a reply or opposition.

14 DATED this 12th day of May, 2011.



15
16
17 LARRY R. HICKS
18 UNITED STATES DISTRICT JUDGE
19
20
21
22
23
24
25
26
27
28